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June 2, 1998

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OUR FILE NO.
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Federal Communications Commission
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FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C.

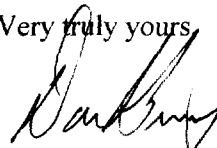
Re: Post-Reply Comment Period Submission of Harry J. Pappas, Stella A. Pappas, and Skycom, Inc. in the matter of Preemption of State and Local Zoning and Land Use Restrictions on the Siting, Placement and Construction of Broadcast Station Transmission Facilities: MM Docket No. 97-182
(Ex Parte/Late Filed, as Filed with the Secretary of the Commission)

Dear Ms. Salas:

We represent Harry J. Pappas, Stella A. Pappas and Skycom, Inc. Enclosed for filing with the Commission, and in accordance with Section 1.1206 (b) of the Commission's rules, are two copies of the above-referenced Post-Reply Comment Period Submission.

Also enclosed is a copy of this letter marked "File Copy." Please stamp the enclosed copy of this letter marked "File Copy" to indicate receipt of this filing by the Commission and return such stamped copy to our messenger. Should the Commission or its staff have any questions regarding this filing, please contact the undersigned counsel for Mr. and Mrs. Pappas and for Skycom, Inc.

Very truly yours,



David D. Burns
for PAUL, HASTINGS, JANOFSKY & WALKER LLP

cc: Harry J. Pappas
John Griffith Johnson, Jr., Esq.

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***Before the
Federal Communications Commission
Washington, D.C. 20554***

In the Matter of)	
)	
Preemption of State and Local Zoning and)	MM Docket No. 97-182
Land Use Restrictions on the Siting,)	
Placement and Construction of)	
Broadcast Station Transmission Facilities)	

**POST-REPLY COMMENT PERIOD SUBMISSION OF
HARRY J. PAPPAS, STELLA A. PAPPAS, AND SKYCOM, INC.**

(Ex Parte/Late Filed, as filed with the Secretary of the Commission)

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June 2, 1998

POST-REPLY COMMENT PERIOD SUBMISSION

Harry J. Pappas and Stella A. Pappas (collectively, the "Pappases"), holders of the permit issued by the Commission to construct commercial television station WMMF-TV, Channel 68, Fond du Lac, Wisconsin (the "Station"),^{1/} and Skycom, Inc. ("Skycom"), a Wisconsin corporation wholly owned by the Pappases, by counsel, hereby respectfully submit their Post-Reply Comment Period Submission in response to certain aspects of the Commission's *Notice of Proposed Rulemaking* (the "NPRM"), MM Docket No. 97-182, released August 19, 1997, 12 FCC Rcd. 12504.

In the NPRM, the Commission invited comment generally on the proposal by the National Association of Broadcasters and the Association for Maximum Service Television, Inc. (collectively, the "Petitioners") that the Commission adopt rules providing for the preemption of certain state and local restrictions on the siting and construction of broadcast station transmission facilities. The Pappases and Skycom filed Comments on October 30, 1997 supporting the proposals of the Petitioners and providing information with respect to the Pappases' and Skycom's experiences with state and local authorities in connection with their attempts to construct the Station. This Post-Reply Period Submission is being filed to bring to the

^{1/} File No. BPCT-870610KN, as modified.

Commission's attention an ordinance (the "Ordinance") recently adopted by the Board of Supervisors of Dodge County, Wisconsin.^{2/}

This ordinance imposes a 500-foot height limitation on all towers, antennas and communications facilities located in Dodge County, Wisconsin. Because "antenna" is defined as "any exterior apparatus designed for telephonic, radio *or television* communications,"^{3/} the ordinance appears to apply to television towers.

The ability of television broadcasting stations whose towers are in Dodge County to serve the public is seriously hampered by this 500-foot limitation. Exhibit B hereto shows the predicted Grade B contour of the Station as licensed by the Commission (*i.e.*, with an antenna at 1660 feet HAAT) and the predicted Grade B contour of the station were the overall antenna height reduced to 500 feet, with the resulting HAAT reduced to 454 feet. Placing the antenna at that height would result in the loss of service to 1,707,196 persons, representing a loss of service to approximately 64 percent of the population which would be served if the Station were able to operate with its antenna as its authorized height.

^{2/} The Ordinance, styled "An Ordinance to Create Standards for Wireless Communication Facilities, Dodge County, Wisconsin," was adopted by the Town of Elba, Wisconsin (where the proposed tower for the Station is to be located). Consequently, the Ordinance is applicable to the Station's proposed tower. A copy of the Ordinance is attached hereto as Exhibit A.

^{3/} Ordinance, section 6.0 (emphasis added).

In addition, such a decrease in the height of the Station's tower would preclude proper service to Fond du Lac. Attached as Exhibit C is a map showing the boundary of Fond du Lac as well as portions of the 80 dbu contours of the Station, based on its authorized facility and on its changed facility, including the 500-foot limit. As indicated, the authorized facility provides 80 dbu service to all of Fond du Lac, while the changed facility would provide 80 dub service to none of Fond du Lac.

The enormous loss of service which would result from the Station being forced to operate with its antenna at 500 feet is not offset by any significant advantage to the residents of Dodge County. Dodge County is principally a rural county and the Station's tower will be sited in an area which is used almost solely for agricultural purposes. The presence of a taller tower in this location poses no significant threat to life, limb or property, nor is a taller tower significantly less aesthetic than a 500-foot tower. In fact, the 500-foot limitation does not, in any way, further any of the five goals expressly stated as the intent of the Ordinance, and in fact is contrary to at least one of such goals.^{4/}

4/ The Ordinance provides that its intent is to:

- a) encourage the location of towers in non-residential areas and minimize the total number of towers throughout the county.
- b) encourage collocation of new and existing tower sites.
- c) encourage users of towers and antennas to locate them to the extent possible, in areas where the adverse impact on the community is minimal.
- d) encourage users of towers and antennas to configure them in a way that minimizes the adverse visual impact of the towers and antennas.
- e) enhance the ability of the providers of communication services to provide such

(continued...)

In short, the Ordinance represents an exercise in arbitrary and capricious municipal lawmaking, to the extreme detriment of broadcasters. If all municipalities were to pass ordinances containing 500-foot limitations on the height of communications towers, it is difficult to imagine how television, and perhaps FM radio as well, could remain a viable service in many parts of the country. With the advent of digital television service, it becomes even more important for municipalities to demonstrate flexibility in their regulation of television towers. The Pappases and Skycom agree that tall towers such as the one proposed for the Station should generally be located in rural areas. However, there is no justification for such a detrimental and arbitrary restriction on the height of a tower which has always been proposed to be located in a rural area.

The Dodge County Ordinance is only one example of the manner in which some municipalities, frequently lacking any understanding or appreciation of the engineering aspects of broadcasting, overstep the limits of their proper land-use function and in the process do substantial injury to the broadcast industry and to the public which the industry seeks legitimately

4/ (...continued)

services to the community quickly, effectively and efficiently.

Ordinance, section 1.1.

The proposed site for the Station's tower is a non-residential area, on privately owned agricultural land, where the adverse impact on the community, including the adverse visual impact, will be minimal. There is no existing broadcasting tower in that area on which the Station's antenna could be located. Moreover, the 500-foot limitation is contrary to the fifth criterion set forth above, in that it would impede the ability of providers of communications services to provide effective service to the community by severely limiting the coverage of television and FM radio broadcast stations.

to serve. The Pappases and Skycom respectfully urge the Commission to adopt the Petitioner's proposal as a fair and equitable means of balancing the legitimate interests of local authorities with the needs of broadcasters to serve the public.

Respectfully submitted,

HARRY J. PAPPAS and STELLA A. PAPPAS
SKYCOM, INC.

By: 

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June 2, 1998

Certificate Of Service

Alicia Altamirano, a secretary in the law firm of Paul, Hastings, Janofsky & Walker LLP, hereby certifies that she has on this 2nd day of June, 1998, caused copies of the foregoing **"POST-REPLY COMMENT PERIOD SUBMISSION OF HARRY J. PAPPAS, STELLA A. PAPPAS AND SKYCOM, INC."** to be mailed to the following by first-class United States mail, postage prepaid:

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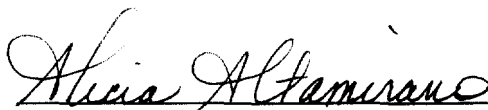
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